

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8630 of 2019

Dr. Dil Narayan Choudhary @ Dil Narayan Choudhary(Male), aged about 66 years, son of Nathun Choudhary, Resident of Akal Bigha, Belaganj, Gaya, Belaganj, Bihar

... .. Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Animal Husbandry and Fisheries Resources Department, Secretariat Building, Bihar, Patna
2. The Under Secretary, Department of Animal Husbandry and Fisheries Resources Department, Government of Bihar, Secretariat Building, Patna
3. The Accountant General, Bihar, Veerchand Patel Path, Patna

... .. Respondents

Appearance :

For the Petitioner : Mr. Manoj Priyadarshi, Advocate
For the Respondents : Mr. Rishi Raj Sinha, SC19
Mr. Akhilesh Kumar, J.C. to SC 19

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 11-02-2021

Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the State.

Petitioner is aggrieved by the order contained in Memo No. 63 dated 02.03.2017 as contained in Annexure-8 whereby in purported exercise of jurisdiction under Rule 43(a) of the Bihar Pension Rules, 1950 (in short, 'Pension Rules'), respondents have decided to forfeit full pension and gratuity of the petitioner permanently.

Learned counsel appearing on behalf of the petitioner has referred to Rule 43(a) of the Pension Rules to



contend that Rule 43(a) is attracted in the case of future conduct of the pensioner. Referring to the instant case, learned counsel submits that the petitioner superannuated on 31.07.2013 whereas the decision to forfeit the pension in purported exercise of power under Rule 43(a) of the Pension Rules was taken in the light of the judgment of the conviction dated 28th of January 2011 and as such, the conviction prior to attaining the age of retirement cannot be construed as future conduct of the petitioner and therefore the entire exercise is without jurisdiction.

Earlier on behalf of the State, counter affidavit has been filed in which the respondents have relied upon the decisions of the Division Bench of this Court (Annexures R/1 & 2/B series). So far as Annexure-R/1 is concerned, it has been examined by this Court and the order dated 07.01.2021 clearly indicated that there was not occasion for this Court to decide the applicability of Rule 43(a) of the Pension Rules. Another decision of the Division Bench of this Court which has simply rejected the contention was not supported by any reason for rejecting the contention of the petitioner that Rule 43(a) of the Pension Rules is not attracted in case conviction is prior to the date of retirement.



Today on behalf of the State, the Division Bench judgment of this Court in the case of *Nityanand Kumar Singh Vs. The State of Bihar & Others* reported in 2016 (2) PLJR 315 has been cited. In that in fact the Division Bench has drawn distinction between Rule 43(a) and 43(b) of the Pension Rules. From discussion in the case of *Nityanand Kumar Singh* (supra), it is evidently clear that the decision to forfeit pension of the pensioner for the conduct or conviction anterior to retirement is alien to Rule 43(a) of the Pension Rules. The relevant discussion of the judgment of the Division Bench in the case of *Nityanand Kumar Singh* (supra) is quoted hereinbelow:-

“5. Rule 43 (a) and Rule 43 (b) on account of similarity of expression and words used, appear to be overlapping and that has led to issue at hand. However, the opening sentence of Rule 43 (a) provides the key to answer the issue. Future good conduct will be implied condition of every grant of pension would mean that a pensioner who has been granted pension is expected to maintain a good conduct in future and in case a pensioner is convicted of serious crime or held guilty of grave misconduct, the Provincial Government has the power granted by Rule 43 (a) to withhold or withdraw the pension or any part of it and its decision has been made final and conclusive. So far as Rule 43 (b) is concerned, this also confers



power upon the State Government to withhold or withdraw a pension or any part of it, either permanently or for a specified period (this expression is not provided in Rule 43 (a)) if the pensioner is found, in a departmental or judicial proceeding, guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence during his service including service rendered on re-employment after retirement (emphasis supplied by us). Under Rule 43 (b), the Government also has the right of ordering recovery from a pension of the whole or part of any pecuniary loss caused to Government on the basis of finding in departmental or judicial proceeding.

6. Before coming to the proviso which consists of three clauses (a), (b) and (c) along with an explanation provided after clause (c), it is obvious from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. rule 43 (a) is not related to his conduct during service and/or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43 (a) and that of Rule 43 (b). Both the provisions



operate in different areas having different connotations. The decision under rule 43 (a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. On the other hand, the purpose of Rule 43 (b) is clearly to enable the State Government to continue or initiate a departmental or judicial proceeding in respect of omissions or commissions by a government servant done while he was in service. Such provision in the rules governing pension vests the State Government with necessary powers to maintain action against a retired government employee for his conduct while in service but subject to some restrictions mentioned in the proviso. The purpose of proviso is to safeguard pensioners or superannuated employees from loss of pension on account of belated disciplinary proceedings or judicial proceedings. On the other hand, the future good conduct mentioned in Rule 43 (a) is good conduct expected of every government servant even after superannuation. Such future conduct is not related to his service period at all.

7. Hence, the requirement of proviso (a) (ii) cannot apply to Rule 43 (a). Such provision in the proviso puts a restriction upon the power of the State Government to initiate a departmental proceeding if not instituted while the government



servant was in service, either before retirement or during re-employment. Such departmental proceeding, by virtue of the provision under consideration cannot be in respect of an event which took place more than four years before the institution of such proceeding. Rule 43 (a) comes into play after retirement and applies till pensioner breathes his last. There can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding. Rule 43 (a) nowhere refers to any departmental proceeding instituted earlier or to be instituted later. Hence, it cannot be governed by proviso (a) (ii) to Rule 43 (b) as it can apply only to initiation of departmental proceeding by the Government after an employee has retired.”

Mr. Rishi Raj Sinha, learned counsel appearing on behalf of the State, has drawn attention of this Court to the judgment of the Apex Court in the case of *Dr. Hira Lal Vs. State of Bihar & others* reported in [2020 (2) BLJ (SC) 260].

On perusal of the judgment in the case of *Dr. Hira Lal* (supra) it appears that there was no discussion so far as Rule 43(a) of the Pension Rules is concerned.

Considering the aforesaid, the Court is constrained to allow this application and to quash the order contained in Memo No. 63 dated 02.03.2017 as contained in Annexure-8.



Accordingly, this application is allowed and the impugned order contained in Memo No. 63 dated 02.03.2017 as contained in Annexure-8 is hereby quashed.

Quashing of the impugned order contained in Memo No. 63 dated 02.03.2017 as contained in Annexure-8 will not preclude the respondents in taking appropriate decision if any other provisions of the Pension Rules including amended Pension Rules permits any such action of forfeiture of pension after affording opportunity of hearing to the petitioner.

(Anil Kumar Upadhyay, J)

BT/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.02.2021
Transmission Date	N.A.

